Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 05-276
The Application of Access Charges to IP-Transported Calls	)	
	)	

COMMENTS OF ACS OF ALASKA, INC., ACS OF FAIRBANKS, INC., ACS OF THE NORTHLAND, INC. AND ACS OF ANCHORAGE, INC.

ACS of Alaska, Inc., ACS of Fairbanks, Inc., ACS of the Northland, Inc. and ACS of Anchorage, Inc. (collectively, "ACS"), through counsel, hereby submit their initial Comments in response to the Public Notice in the above-captioned proceeding.[1] ACS supports the position of SBC Communications, Inc. ("SBC") that transmission providers using Internet protocol ("IP") technology to transport long-distance calls are liable for interstate access charges. Transmission providers should not be able to avoid paying access charges on interexchange traffic by employing IP technology or by routing traffic through competitive local exchange carriers ("CLECs") that disguise the traffic as local.

ACS requests that the Commission find that transmission providers must pay interstate access charges when they use IP technology, or any other technology, to transport long-distance calls. In addition, the Commission should find that routing such interexchange traffic through CLECs who disguise long-distance calls as local violates the Communications Act. Finally, the Commission should deny the petition of VarTec Telecom Inc. ("VarTec").

I. TRANSMISSION PROVIDERS MUST PAY INTERSTATE ACCESS CHARGES WHEN THEY TRANSPORT LONG-DISTANCE CALLS

Under the Commission's rules, interexchange carriers ("IXCs") must pay access

---

[1] Public Notice, DA 05-2514 (rel. Sep. 26, 2005) (the "*Public Notice*").

charges for the use of local exchange facilities to deliver interstate and international telecommunications services.[2] This requirement covers any "interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology."[3] Such services can be provided by commercial mobile radio service ("CMRS") providers, incumbent local exchange carriers or CLECs depending on the nature of the traffic.[4] Access charges apply regardless of the number of service providers involved in providing IP transport.[5]

The services of VarTec, PointOne, Transcom and others fall squarely within this three-part test and are subject to access charges.[6] VarTec's customers undoubtedly use ordinary customer premises equipment in the same manner as callers do on any circuit-switched long-distance network.[7] Such calls originate and terminate on the PSTN and no net protocol conversion takes place. Moreover, since the provision of long-haul transmission by third-party providers, whether IP-based or otherwise, does not change the nature of the transmission from

---

2 *See* 47 C.F.R. § 69.5(b).

3 *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, 7457-58 (2004) ("*AT&T Order").*

4 *Id.* at 7470, n.80.

5 *Id.* at 7469-70.

6 SBC Petition at 18-21.

7 *See e.g. AT&T Order* at 7466 (noting that end users place IP-transported calls using 1+ dialing, the same method that they use for calls on a circuit-switched long-distance network).

telecommunications to enhanced services,[8] no enhanced functionality is offered.

The combined offering of Vartec and these middle-men therefore is an "interexchange service" subject to access charges. Moreover, since at least one of these providers must be holding itself out as an IXC but none of them is willing to admit it, these providers collectively should be held responsible for paying access charges on the interexchange traffic that SBC terminates. The Commission should not allow any of these entities to escape liability for access charges until responsibility for such charges is appropriately allocated.

II. DISGUISING LONG-DISTANCE TRAFFIC AS LOCAL TRAFFIC VIOLATES THE COMMUNICATIONS ACT

The Commission should not allow transmission providers to avoid access charges by passing interexchange traffic through a CLEC which disguises long-distance calls as local. Such subterfuge occurs when a CLEC routes interexchange traffic through the local interconnection trunks of a terminating carrier and may include manipulation of caller identification information.[9] The inappropriate routing and relabelling of interexchange traffic causes serious problems for local companies, it violates the Communications Act and it must be stopped.

When a CLEC disguises long-distance traffic as local traffic, it prevents terminating carriers from accurately assessing and collecting access charges and from properly allocating network resources. Local interconnection trunks are not designed to measure interexchange traffic, and without correct caller information, terminating carriers are left without any means of tracking improperly routed and labeled interexchange traffic. Unable to

---

[8] *C.f. AT&T Order* at 7468 (explaining that the use of the Internet, as opposed to a private IP network or other network, does not alter the Commission's determination that IP-based transport of interexchange traffic is subject to access charges).

[9] *See* SBC Petition at 20-22.

distinguish between interexchange and intra-exchange traffic, terminating carriers lose access charge revenues. Carriers also are forced to prematurely deploy network upgrades to support over-inflated local call volume.

ACS faces these problems today. Each month ACS receives for termination on its network hundreds of thousands of interstate, interexchange traffic minutes that are being routed over ACS's local trunks. ACS believes that one of the carriers in the call path is stripping the original calling party number (the "CPN") out of the signaling for such calls and inserting fictitious local numbers in the CPN field. In October 2005 alone, ACS terminated nearly 700,000 minutes of such calls to its wireline customers, and more than 200,000 minutes of such calls to its wireless customers.

The disguising of long-distance calls as local violates the Commission's rules and the Communications Act. Common carriers are required to accurately transmit CPN associated with interstate calls and the Communications Act generally prohibits unjust and unreasonable practices.[10] The improper routing of long-distance calls and the manipulation of CPN information by CLECs should be prohibited.

Such behavior also undermines effective law enforcement. The Communications Assistance for Law Enforcement Act of 1994 ("CALEA") requires that carriers be capable of providing the government with access to reasonably available call-identifying information.[11] This requirement applies not only to originating and terminating carriers, but also to transmission

---

[10] *See* 47 C.F.R. 64.1601(a) ("common carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers"); 47 U.S.C. §201(b) (prohibiting carriers from engaging in unjust and unreasonable practices), §202(a) (prohibiting carriers from subjecting any person to undue or unreasonable prejudice or disadvantage).

[11] 47 U.S.C. § 1002(a)(2).

service providers that satisfy CALEA's substantial replacement provision, such as facilities-based broadband Internet access providers and Voice-over-IP providers.[12] CALEA thereby applies to VarTec, PointOne, Transcom and other intermediate carriers. When such carriers manipulate call identification information, like the CPN, terminating carriers, such as ACS, no longer are able to provide such information in response to lawful court orders. Thus, disguising the origin of telecommunications traffic undermines one of CALEA's fundamental purposes, and could thwart law enforcements efforts to protect and promote national security and public safety.

III. THE COMMISSION SHOULD DENY VARTEC'S PETITION IN ITS ENTIRETY

VarTec must pay interstate access charges and the Communications Act is not violated as a result. In fact, as already discussed, Commission rules and the Communications Act require such results and VarTec's arguments to the contrary are unavailing. Likewise, VarTec's remaining arguments are baseless and the Commission should deny VarTec's Petition.

VarTec's argument that CMRS traffic is local if it originates and is passed off to another carrier within the same MTA, and therefore is subject to reciprocal compensation rather than access charges, is without merit. Reciprocal compensation pricing applies only to local calls and rules governing reciprocal compensation do not supplant access charges for interexchange traffic.[13] CMRS-originated traffic is deemed "local" only if it originates and terminates within the same MTA at the time the call begins.[14] CMRS traffic that is merely handed off to a third-party transmission provider within the originating MTA is not "local" if it is

---

12 *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 05-153, ¶¶ 1, 11 (rel. Sept. 23, 2005).

13 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16013-16014 (1996).

14 47 C.F.R. §51.701(b)(2).

not terminated in the same MTA at the time the call begins. Therefore such traffic is subject to access charges rather than reciprocal compensation.

VarTec's argument that it should be paid for transiting traffic misconstrues Commission precedent and rules. Commission precedent has allowed interconnecting LECs to charge for the transiting of *local* CMRS traffic not originating on the LEC's network.[15] The *Texcom Order*, upon which VarTec relies, considered whether reciprocal compensation or transiting charges applied to LEC-CMRS traffic that transits a third carrier's network. The Commission used its principle of cost causation to determine that a transiting carrier may assess the terminating carrier because the transiting carrier has no ability to recover its costs from the end user.[16] Transiting charges are not applicable to interstate, interexchange traffic[17] and VarTec is not entitled to charge for such transport.

IV. CONCLUSION

VarTec is required to pay access charges to terminating carriers for the use of their local exchange facilities for interexchange services. By employing a third-party, long-haul transmission provider, VarTec is not able to shed its liability for such access charges while simultaneously gaining the right to impose transiting charges. For the foregoing reasons, ACS respectfully requests that the Commission (1) grant SBC's Petition, (2) declare unlawful the practice of disguising interstate, interexchange traffic as local traffic and (3) deny in its entirety VarTec's Petition.

---

[15] *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, Memorandum Opinion and Order, 16 FCC Rcd 21493, 21495 (2001) ("*Texcom Order*"); *recon. denied*, 17 FCC Rcd 6275 (2002).

[16] *Id.*

[17] *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33, ¶ 120 (rel. Mar. 3, 2005).

Respectfully submitted,

ACS OF ALASKA, INC., ACS OF FAIRBANKS, INC., ACS OF THE NORTHLAND, INC. AND ACS OF ANCHORAGE, INC.

/s/

Karen Brinkmann
Thomas A. Allen
LATHAM & WATKINS LLP
555 Eleventh Street, NW,
Suite 1000
Washington, DC 20004-1304
(202) 637-2200
karen.brinkmann@lw.com
thomas.allen@lw.com

Their Attorneys

Leonard A. Steinberg
General Counsel
ALASKA COMMUNICATIONS SYSTEMS GROUP, INC.
600 Telephone Avenue, MS 65
Anchorage, AK 99503
(907) 297-3000

Dated: November 10, 2005